

Trial Procedures
Civil Trial to a Jury

The Honorable Michael H. Watson
United States District Judge
Southern District of Ohio - Eastern and Western Division

A lawsuit in which you represent a party has been assigned to this Court for trial. These procedures are designed to handle your case promptly and efficiently without impeding your ability to present your client's case fully and fairly. Regardless of the division in which your case was filed, it may be necessary to hold trial in either Columbus, Ohio or Cincinnati, Ohio.

A. Counsel Tables

The parties will occupy the counsel table chosen or agreed to before the opening of the first session of the trial. The parties and all counsel will be present at counsel tables at all sessions before the Court enters, and will remain at counsel tables until after the Court has left the bench. The parties and all counsel will remain at counsel tables until after the jury leaves the courtroom at the end of all sessions. The parties and counsel will stand upon the entrance and exit of the jury.

B. Appearances

Counsel will enter their appearances with the Court Reporter and the Courtroom Deputy before the start of the opening session of the trial. Any attorney not present at the final pretrial conference may not participate at trial.

C. Court Sessions

Under ordinary circumstances, trials will be held on Monday, Tuesday, Wednesday, Thursday and Friday of each week, except that a session may be preempted by the Court's criminal calendar. Additionally, time may be reserved for the Court to conduct final pretrial conferences, motions, and preliminary injunctions.

Morning session begins at 9:00 a.m. and will recess at approximately 10:30 a.m. for fifteen minutes.

Noon recess will be at approximately 12:00 p.m.

Afternoon session begins at 1:30 p.m. and will recess at approximately 3:15 p.m. for fifteen minutes.

Court will adjourn each day at approximately 5:00 p.m.

D. Addresses of Counsel

Counsel will address the Court and the jury in the following manner:

- (1) Voir dire examination, opening statements and closing arguments will be conducted from the lectern facing the jury;
- (2) All addresses to the Court will be made from the lectern facing the Court; and
- (3) Counsel shall stand when addressing the Court for any other reason.

E. Voir Dire Examination

The entire panel of prospective jurors (i.e., those seated inside and outside of the jury box), will be examined in one continuous examination. Each prospective juror is assigned a number by the Jury Clerk. Jurors will be seated in order of their assigned numbers. Counsel will be provided with a list of the jurors' names and numbers on the Friday afternoon preceding the commencement of trial.

Eight prospective jurors will be seated in the jury box. The Court suggests that the parties agree to accept the unanimous verdict of Six (6) or Eight (8) jurors so that the Seventh and Eighth jurors are "voting alternates." The Court will assign four (4) peremptory challenges to each side.

The Court will conduct a general voir dire examination tailored to the issues in the case being tried. In addition, counsel are encouraged to submit, prior to trial, questions they would like the Court to include in its voir dire examination. Copies of such questions should be served on opposing counsel **ONE (1) WEEK** prior to trial. Counsel may supplement the Court's examination with questions not previously asked. Counsel must address their questions to the entire panel in general. Counsel may inquire regarding any omission in a juror's answer(s) to the questionnaire or, after obtaining the Court's permission, regarding any inquiry justifiably elicited by information contained in the questionnaire. However, the Court retains discretion to limit counsels' inquiry. Generally, counsel will be limited, equally, to the time-period determined by the complexity of the matters set forth for trial.

F. Voir Dire Questions by the Court

The Court will question prospective jurors, generally, in the following manner:

- (1) Medical or physical disability that would make it difficult to serve as a juror; transportation problems.
- (2) Any prior knowledge or information about the case.
- (3) Any personal interest of any kind whatsoever in the case.
- (4) Any immediate family or personal situation which would render a juror unable to give this case the juror's undivided attention.
- (5) Any relationship, either personal or professional with any of the parties, counsel, or any witness.
- (6) Any feeling, prejudice, or bias which might interfere with full and impartial consideration of the evidence in favor of or against either party.
- (7) Any reason of any nature whatsoever why a juror cannot hear, consider, and deliberate on the evidence that will be presented and render a verdict based solely on the evidence.
- (8) Any reservation about accepting the proposition that jurors are the sole judges of the facts, and the Court is the sole judge of the law.
- (9) Will a juror accept the law as the Court instructs him or her without any reservation whatsoever, and apply it to the facts the juror finds from the admitted evidence.
- (10) Any member of the panel previously selected to serve on a jury in either a State or Federal Court? If so, would prior experience have any effect or influence on the juror's ability to serve as a fair and impartial trier of fact.

G. Challenges to the Jury Panel

The entire panel shall be challenged for cause. This will be conducted outside the presence of the jury at the conclusion of the voir dire examination.

H. Peremptory Challenges

The manner of exercising peremptory challenges will be determined at the final pre-trial conference.

I. Jury Instructions

SEVEN (7) DAYS prior to the Final Pretrial Conference, the parties shall jointly submit a complete set of jury instructions, indicating 1) agreed instructions; 2) instructions proposed by plaintiff, but opposed by defendant; and 3) instructions proposed by defendant, but opposed by plaintiff. All proposed jury instructions shall be submitted in hard copy and to the Court email address at watson_chambers@ohsd.uscourts.gov. Each instruction should be submitted in WordPerfect for Windows 6.1 or later, on a separate 8.5" x 11" sheet of paper identified as "Plaintiff(s) [Defendant(s)] Requested Instruction No. ___." All proposed instructions shall be supported by citations to authority at the time submitted to the Court. Grounds for objections need not be articulated at this time, but will be addressed at the Final Pretrial Conference. If counsel wish to utilize special verdict forms or submit interrogatories to the jury, these should also be filed along with the jury instructions. The original of the request for special instructions must be filed with the Clerk of Court, prior to presentation to the Court.

The Court uses as sources for its instructions Devitt, Blackmar, Wolff, & O'Malley's Federal Jury Practice and Instructions, 4th Edition; Ohio Jury Instructions; the Sixth Circuit Pattern Jury Instructions; and instructions given in prior cases.

During trial or at the close of all evidence, the parties may submit supplemental requests for instructions on matters not anticipated prior to trial.

Courtesy copies of all filings set forth in this Notice shall be hand-delivered to chambers at the time of the filing with the Clerk.

J. Examination of Witnesses

Counsel should expect to proceed only with direct examination, cross-examination, and re-direct examination. Only in rare instances will the Court permit re-cross examination, and only where, in the Court's view, the scope of the re-direct exceeds the scope of cross-examination.

Counsel shall conduct their examination from the lectern and will approach the witness to tender an exhibit only after first seeking the permission of the Court. In formulating a question to a witness dealing with an exhibit, counsel shall specify the exhibit number or designation. Counsel will indicate to the Court when he/she has completed the examination of a witness, after which the Court will advise opposing counsel to proceed. During the examination of a witness, counsel will first obtain permission of the Court to confer with co-counsel. Counsel will stand when making an objection, and will address the objection directly and only to the Court.

Any exhibits produced for the first time during trial, shall be properly marked and shown to opposing counsel **BEFORE** posing a question to a witness.

The Court will allow each counsel to qualify his or her own expert witnesses.

No witness may be included on a witness list if not identified in connection with initial disclosures required under Fed. R. Civ. P. 26 (or reasonably timely supplements thereto), or in response to a discovery request seeking the identity of persons with knowledge regarding the matters at issue (or reasonably timely supplements thereto), unless neither pretrial requirement applies to the action.

No later than 4:00 p.m. on the day before trial, and by the close of court each day thereafter, counsel conducting witness examinations on the following day shall provide opposing counsel with a list of those witnesses he or she anticipates calling, in the order in which they are expected to testify.

K. Objections/Sidebar Conferences

Counsel will stand when making an objection and will make the objection directly and only to the Court.

When objecting, state only that you are objecting and if requested by the Court, state the grounds. Objections shall not be used for the purpose of making speeches, repeating testimony, or to attempt to guide a witness or influence the jury.

Argument upon an objection will not be heard unless permission is given or argument is requested by the Court. Either counsel may request a bench conference.

L. Decorum

Colloquy or argument between counsel will not be permitted. All remarks shall be addressed to the Court. Counsel shall maintain a professional and dignified atmosphere throughout the trial. Appearance, mannerisms, or habits that are designed to arouse the sympathy or prejudice of the jury are an impediment to an impartial trial and will not be permitted.

During trial, counsel shall not exhibit familiarity with witnesses, jurors, or opposing counsel and shall avoid the use of first names. No juror shall be addressed individually.

During opening statements and final arguments, all persons at counsel tables shall remain seated and be respectful so as not to divert the attention of the Court or the jury.

Do not ask the Court Reporter to mark testimony. All requests for having either a question or an answer read back shall be addressed to the Court.

The Court expects counsel to behave civilly and in a professional manner both toward the Court and each other, and in all aspects of this litigation. Any violation of this expectation, whether occurring in open court, in chambers, in the taking of depositions or otherwise, may be cause for sanctions.

M. Exhibits

Counsel will assemble, mark, and place all exhibits in 3-ring binders. Four sets of exhibits are required: one to be used during trial, one for the Court, one for opposing counsel, and one for the law clerk assigned to this case. Each counsel shall deliver three (3) complete sets of the exhibits to the Courtroom Deputy not later than **THREE (3) DAYS** prior to the commencement of trial.¹

All exhibits shall be marked as listed in the Joint Proposed Final Pretrial Statement, with each exhibit bearing a numbered exhibit sticker and with the same number on a tab extended beyond the binder on the right side thereof. Each page of a multi-page exhibit shall be numbered with a distinctive number (e.g., as applied by a BATES numbering machine). All exhibits will be sequentially numbered with Arabic numerals as follows. Joint exhibits will bear Roman numerals and will be designated JX ___ on white exhibit labels. Plaintiff's exhibits will bear Arabic numbers and will be designated PX ___ on yellow exhibit labels. Defendant's exhibits will be identified with letters and will be designated DX ___ on blue exhibit labels. Third-party exhibits may be numbered with a distinctive identifying letter prefix.

When defendant's exhibits exceed fifty-two (52) in number, defendant shall promptly advise opposing counsel. In such event, both sides will identify exhibits with Arabic numbers and the letter prefix, "P" for plaintiff's, and "D" for defendant's. Counsel are to supply the Court Reporter, Courtroom Deputy, and opposing counsel with a list of exhibits. The parties shall confer so that any given exhibit shall be designated and numbered only once (e.g., "Smith-1" and "Jones-1001" should not be the same document). Joint exhibits are encouraged.

It is not necessary to bring exhibits to the Final Pretrial Conference or to file them with the Court one (1) week before trial. Counsel are required, however, to list all exhibits in the proposed Joint Final Pretrial Order.

Exhibits deposited with the Courtroom Deputy and appropriately marked may be used by any party at trial.

Each party should offer its exhibits into evidence at one time, immediately prior to resting its case, except that an exhibit to be examined by the jury must be offered and

¹The non-original sets of exhibits may contain Xeroxed or equivalent sets of photographs.

admitted prior to examination. The admissibility of all exhibits referred to during trial and offered by the parties, other than those examined by the jury, will be ruled upon by the Court, at the latest, prior to that party's resting. Either side may offer any marked exhibit, regardless of which party marked it.

There is no requirement that counsel object to any exhibit at the Final Pretrial Conference.

Any exhibits produced for the first time during trial, shall be properly marked and shown to opposing counsel **BEFORE** posing a question to a witness. Any deviation from this procedure, in a situation wherein exhibits are unusually voluminous, in which event counsel may wish merely to make his exhibits available for inspection and/or copying by opposing counsel, will be permitted only upon leave of Court being first obtained.

After first seeking the permission of the Court, counsel will approach the witness to tender an exhibit.

N. Depositions

Counsel will confer in advance of the final pretrial conference and attempt to resolve objections by agreement. If any objections remain for ruling, counsel shall include in the Joint Final Pretrial Statement any objections, identifying the page number and line where the objection will be found, and stating in one sentence the grounds for the objection. This procedure applies to both written and videotape depositions. Videotape depositions which contain objections must be accompanied by a full or partial transcript. Failure to comply with this requirement will be deemed a waiver of any objection not properly brought to the Court's attention. When the Court sustains an objection, the portion not allowed must be edited out.

Videotape presentations must include a method for cutting off either sound or the entire picture from the jury, in situations where the Court must rule on objections to testimony. In addition to the videotape itself, a typewritten transcript must be provided to the Court and opposing counsel, prior to the first day of trial.

Counsel are encouraged to excerpt (by agreement), the pertinent parts of depositions to minimize presentation of unnecessary or extraneous matters.

O. Demonstrative Evidence

If any sketches, models, diagrams, etc., of any kind will be used during trial or in argument, they must be exhibited to opposing counsel. If any sketches, models, diagrams or other demonstrative evidence of any kind will be used during trial, not later than **FIVE (5) DAYS** before the Final Pretrial Conference. Objections to such evidence must be submitted to the Court no later than noon the Friday preceding trial. Demonstrative evidence prepared solely for the purpose of final argument shall be

displayed to opposing counsel at the earliest possible time, but no later than **TWENTY-FOUR (24) HOURS** prior to the commencement of arguments.

P. Court Reporter

Should counsel desire daily transcripts of all or part of the trial testimony, arrangements must be made with the official court reporter,

Cincinnati: Mary Ann Ranz at (513)564-7626
Columbus: Pat Shaw at (614)719-3205,

at least **TWO (2) WEEKS** prior to trial. Any emergency requests for transcripts of testimony during trial must be approved by the Court. A glossary of any unusual words, names, or terms that may be used during trial will be provided to the official court reporter at least **ONE (1) WEEK** before trial.

Q. Pre-summation (Final Argument) Conference

The Court will hold a conference with counsel in chambers and on the record, prior to final arguments in jury cases for the following purposes:

- (1) Counsel may be heard on proposed jury charges presented by either side and/or on the tentative charges submitted by the Court. Counsels' attention is directed to Fed.R.Civ.P. 51;
- (2) Counsel and the Court will determine the length of the final arguments to the jury.